

ANDY ORTIZ # QN-9897
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PRO SE, ANDY ORTIZ

08/26/23

TO: CLERK OF COURT

JAMES A. BYRRE U.S. COURT HOUSE
EASTERN DISTRICT COURT
ROOM: 2609
601 MARKET STREET
PHILADELPHIA, PA. 19106

RE: ANDY ORTIZ v. GIBSON, et al / ANDY ORTIZ v. BlackSheer, et al
Civil Action # 21-CV-3813 / Civil Action # 21-CV-3101

DEAR CLERK OF COURT:

ENCLOSED PLEASE FIND PLAINTIFF' Motions.

- 1.) A MOTION TO DISMISS DEFENDANTS Motion - 21-CV-3813.
- 2.) A MOTION TO REQUEST PRODUCTION OF DOCUMENTS - 21-CV-3813.
- 3.) A MOTION REQUEST FOR ADMISSION - 21-CV-3101.
- 4.) A MOTION SECOND REQUEST TO PRODUCTION OF documents 21-CV-3101.

STATING A CLAIM IN THE ABOVE - REFERENCE MATTER.

MR. ORTIZ PLAINTIFF STATES THAT DEFENDANTS FAIL TO RESPOND TO THE FIRST SET OF INTERROGATORIES ON Civil Action # 21-CV-3101.

RESPECTFULLY Submitted,

Andy Ortiz

IN THE UNITED STATES DISTRICT COURT
FOR THE ~~WESTERN~~^{EASTERN} DISTRICT OF PENNSYLVANIA

ANDY ORTIZ	
PLAINTIFF,	
V.	OPPOSITION TO DEFENDANTS MOTION TO DISMISS
C/O: Gibson, et al	CIVIL ACTION # 2:21-CV-3813
Defendants,	

OPPOSITION TO DEFENDANTS MOTION TO DISMISS

(A) Count 1 Failure to Protect Claim against Defendants should NOT be dismiss Because: et al.

1.) C/O: W. Bailey, C/O: E. young, C/O: Gibson, C/O: Johnson are moving defendants that where on active duty. on the 7 am to 3 pm and 3 pm to 11 pm. where Plaintiff and cellmate was assaulted multiple times. Was let out of cell with protective custody status and was let out of cell for Shower, phone calls, out door recreation with general population when, Plaintiff and cellmate was suppose to be seperated from general population. where, Plaintiff and cellmate where assault and Plaintiff cellmate was assaulted by general population inmate sexual. where Plaintiff try to stop it but got assaulted but, not sexual in the shower area and in Plaintiff cell. See: Wright v. Miller, 561 F. APP'x 551 (7th Cir. 2014) While, on the days and shift that was stated in the Complaint and other days on both shift. where these individual where assigned to and on duty. where grievances where filed on these individual about Plaintiff and cellmate where suppose to be seperated from the general population. But, guard / above defendants ignored and continue to let general population out with Plaintiff and Plaintiff cellmate while already knowing the risk. See: Farmer v. Brennan, 511 U.S. 825 (1994) where court held prison officals have a duty to protect prisoner from violences at the hands of other inmates. where, Plaintiff was in protective custody and wore an orange jump suit. So these officals knew

about the serious risk and harm. when, Plaintiff & Plaintiff signed onto protective custody for there safety from being harmed by Andrew McCormick and general population inmates.

See: Hamilton v. Leavy 117 F.3d 742 (3d Cir. 1997) where the disregard an inmate to go to protective custody and kept him in general population while, the officials knew the risk and harm. See: A.K. v. Amucci, 17 CV 769 (VB), 2018 WL 4372673, 2018 U.S. District. Lexis 156455 (S.D.N.Y. Sep. 13, 2018) 2.) Sgt: L. Crawford, LT: D. Spellman, ~~the~~ Sgt: F. Heads. Jr violated 8th amendment right.

where, Plaintiff and Plaintiff cellmate was sign on protective custody. But, disregard Plaintiff and Plaintiff cellmate to be remove from K-unit to Protective Custody unit which, was C-unit.

Where, Plaintiff was forced to stay on K-unit with the inmates him and his cellmate where having issue with.

where these Supervisory liability knew the risk and serious harm

See: Scott v. Mahlmeister where a Prisoner report to staff members about other inmates threaten him Scott v. Mahlmeister 319 Fed. Appx. 160, 161 (3d Cir 2009). where, Plaintiff and cellmate report incident to officials that they where suppose to be Separated from general Population. Which, they disregarded Plaintiff and Plaintiff cellmate where continue to be lead out with general Population and later got assaulted.

3.) LT: G. Malloy Violated 8th amendment to ~~the~~ Failure to Protect.

See: Scott v. Mahlmeister 319 Fed. Appx. 160, 161 (3d Cir 2009). Where Plaintiff reported to LT: G. Malloy and Sgt: S. Granville. That Plaintiff was at a high risk of assault and was receiving threatening Kites and wrote a memorandum statement about his concern for his safety on D1-Pod 4 and was later assaulted when, ~~returning from P~~

when, Plaintiff was transfer from P.I.C.C to C.F.C.F back to D1-Pod and was assaulted By (2) inmates on the 1st day on the 7am to 3pm shift. Where defendant C/O: CL. Jones, C/O: SS. Robinson where the active duty officials that day abandon there post. Along with C/O: M. Cooper.

4.) C/O: Morris and C/O: Clark ignore the fact that I stated I was receiving threats and that urine and feces matter was getting thrown at and underneath Plaintiff door. Where Plaintiff stated to these two prison officials but, still continue to happen.

8th amendment right was violated on unsanitary conditions and failure to protect. While, Plaintiff was on C-unit the protective custody unit. Plaintiff was on protective custody unit but, (P.I.C.C.) had General Population confined on the same unit at the time.

5.) Warden: M. Farrell and Major: C. Martin and Commissioner: Blanche Carney. Failure to protect and transfer Mr. Ortiz the Plaintiff in this action and his cellmate Michael Witherspoon to protective custody in a reasonable manner. Where Plaintiff and Plaintiff cellmate filed a grievance form and added these defendant to move both Plaintiff and Plaintiff cellmate to C-unit. Because, of the safety and issues Plaintiff had with an inmate named Andrew McCormick where a separation was made. Plaintiff still had an altercation with Andrew McCormick in Plaintiff cell. on the time around and after May-18-20. Prior to that Plaintiff was stabbed in the head on around the month of March and February Plaintiff was assault by guards. Where these officials knew the risk of Plaintiff and the harm Plaintiff had to deal with during that time period. Where 8th amendment violate to failure and to protect. Along with Supervisory liability claim.

Blanche Carney was the Commissioner of prisons and Major: C. Martin was the Major of all the guards and was in control of K-unit and (P-I-C-C.)

Warden: M. Farrell was the warden in control of (P-I-C-C) controlling the welfare and protection of all inmates including Plaintiff that was confine at the Philadelphia - Industrial - Correctional - center.

~~Count~~ Count (2) should not be dismiss against individual moving defendants on 1st amendment claim to retaliation because: and ect al.

1.) Sgt: E. Heads, Lt: D. Spellman, Lt: L. Crawford told Plaintiff and Plaintiff cellmate that the yard, shower,

Phone Privileges was getting taken away for writing grievances on Defendants C/O: Johnson, C/O: Gibson, C/O: E. Young, C/O: W. Bailey.

See: Allah v. Sieverling, 229 F.3d 220, 224, 225 (3d Cir. 2000).

See: Rausser v. Horn, 241 F.3d 330 (3d Cir. 2001).

where in both these case Plaintiff was retaliate against for doing a protective conduct. Where, later privileges where denied.

See: Bendy v. Ocean County Jail, 341 Fed. APPX. 799, 802 - (3d Cir. 2009) Filing a grievances is protective conduct and is protected by the 1st amendment right.

On around or after May -15-2020

2.) C/O: Johnson and C/O: Gibson where the officers on the 7am to 3pm Shift came in Plaintiff and Plaintiff Cellmate cell around May -18-2020 and told Plaintiff that he would lose his yard, shower, phone privileges for filing a grievances. Plaintiff and Plaintiff cellmate was Confront By C/O: Johnson where C/O: Johnson Stated "next time we get him in trouble he will smack us with his walkie talkie." C/O: Gibson just watch it / the incident Play out. Incident happen on K-unit.

3.) C/O: W. Bailey and C/O: E. Young where the officers on the 3pm to 11pm Shift told Plaintiff and Plaintiff Cellmate to not ask for yard, showers, phone privilege until they was to stop filing grievances.

See: Bendy v. Ocean County Jail, 341 Fed. APPX. 799, 802 - (3d Cir 2009)

4.) C/O: Johnson and C/O: Gibson with held Plaintiff Commissary had Plaintiff sign for the Commissary but, never received the Commissary bag. For keep filing grievance's, which, is a violation to the 1st amendment right to retaliation claim.

Because Plaintiff filed a grievance which, was protected under the 1st amendment. Then was retaliated against individual and was never given his / Plaintiff Commissary bag that was purchased by plaintiff. Commissary bag was in the amount of \$50.00. For filing a grievances on May -20-2020.

5.) LT: D. Spellman and Sgt: L. Crawford, Sgt: E. Heads and Major: C. Martin that Plaintiff will be written

up for a false misconduct in retaliation to Plaintiff writing a grievances May-20-2020 and reporting incident about inmate came into there cell / Plaintiff cell to assault him.

which, violated 1st amendment right to retaliation and Violation to due process and deliberate indifferences.

6.) C/O: M. Cooper violated Plaintiff 1st amendment right. when, he reported in the (PC) hearings about the assaults and Safety he / Plaintiff had while, report this to warden Deputy: E. Cruz & Major: R. Rose. Where, later C/O: M. Cooper retaliated against inmates for reporting incidents where, Plaintiff had his recreational priviledges taken away.

7.) cell mate OF Plaintiff Micheal Witherspoon will like to be depose in this civil action.

8.) Demetris Thomas will like to get depose for when, Plaintiff was on C-unit and General Population was housed on the same unit. where protective custody was located.

9.) Stanley Percell will like to be depose he witness us being in Protective Custody on K-unit and being lead out the same time as K-unit for recreation.

I HEREBY DECLARE THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY ACKNOWLEDGE.

Dated: 08- - 23

SIGNED: *Andy Ortiz*

PRINT: ANDY ORTIZ

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Excuted at SOMERSET, PA

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U.S.M.S.
X-RAY

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